MIAMIBEACH

Special City Commission Meeting City Hall, Commission Chambers, 3rd Floor, 1700 Convention Center Drive September 30, 2013

Mayor Matti Herrera Bower Vice-Mayor Edward L. Tobin Commissioner Jorge R. Exposito Commissioner Michael Góngora Commissioner Jerry Libbin Commissioner Deede Weithorn Commissioner Jonah Wolfson

City Manager Jimmy L. Morales City Attorney Jose Smith City Clerk Rafael E. Granado

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ATTENTION ALL LOBBYISTS

Chapter 2, Article VII, Division 3 of the City Code of Miami Beach, entitled "Lobbyists," requires the registration of all lobbyists with the City Clerk prior to engaging in any lobbying activity with the City Commission, any City Board or Committee, or any personnel as defined in the subject Code sections. Copies of the City Code sections on lobbyists laws are available in the City Clerk's Office. Questions regarding the provisions of the Ordinance should be directed to the Office of the City Attorney.

Special note: In order to ensure adequate public consideration, if necessary, the Mayor and City Commission may move any agenda item to the alternate meeting date, which will only be held if needed. In addition, the Mayor and City Commission may, at their discretion, adjourn the Commission Meeting without reaching all agenda items.

Meeting called to order at 6:03:48 p.m.

Requests for Additions, Withdrawals and Deferrals announced by Rafael E. Granado, City Clerk.

SUPPLEMENTAL MATERIAL 1:

R7A1 – Resolution
R7A2 – Resolution
R7B1 – Resolution
R7B2 – Resolution
R7C – Resolution
R7D – Resolution
R7D – Resolution
R7A1 – Resolution
R7D – Resolution
R7A2 – Resolution
R7A3 – Resolution
R7A4 – Resolution
R7A4 – Resolution
R7A5 – Resolution
R7A6 – Resolution
R7A6 – Resolution
R7A6 – Resolution
R7A7 – Resolution
R7A7 – Resolution

R7E – Resolution 1B- Revised Memorandum & Resolution

SUPPLEMENTAL MATERIAL 2:

R5D – Memorandum & Ordinance

R7Q - memorandum

R9A – Revised item

ADDENDUM MATERIAL 1:

R9C

ADDENDUM

Motion made by Commissioner Góngora to add item R9C to the Special Commission Agenda as an emergency item; seconded by Commissioner Exposito; Voice vote: 7-0.

R5 - Ordinances

7:02:33 p.m.

R5A Amend Chapter 50 And Chapter 102

1. An Ordinance Amending Chapter 50 Of The City Of Miami Beach Code, Entitled "Fire Prevention And Protection," By Amending Section 50-4 Thereof, Entitled "Enforcement By Fire Inspectors; Notice Of Violation," To Add Citations And Implement New Fine Schedule Related To Fire Code Violations; By Amending Section 50-5 Thereof, Entitled "Annual Fire Prevention And Fire Safety Inspection Permit" To Include The Night Inspection Fee Previously Adopted Under Section 102.379 Of The City Code; Providing For Repealer, Severability, Effective Date, And Codification. <u>5:04 p.m. Second Reading Public Hearing</u>

ACTION: Title of the ordinance read into the record by Rafael E. Granado, City Clerk. Public Hearing held. **Ordinance No. 2013-3813 adopted.** Motion made by Commissioner Weithorn to approve the ordinance; seconded by Commissioner Góngora; Ballot vote: 6-0; Absent: Commissioner Wolfson. **Chief Otero to handle.**

Handouts and Reference Materials:

1. Ad in The Miami Herald – Ad # 809

7:03:36 p.m.

2. An Ordinance Amending Chapter 102 Of The Code Of The City Of Miami Beach, Entitled "Taxation," By Deleting The Nightclub Fee Set Forth In Section 102.379, Entitled "Schedule Of Taxes, Effective October 1, 2009"; Providing For Repealer, Severability, Codification, And An Effective Date. <u>5:04 p.m. Second Reading Public Hearing</u>

(Requested by the Neighborhood/Community Affairs Committee)

(Legislative Tracking: Fire Department) (First Reading on September 11, 2013)

ACTION: Title of the ordinance read into the record by Rafael E. Granado, City Clerk. Public Hearing held. **Ordinance No. 2013-3814 adopted.** Motion made by Commissioner Weithorn to approve the ordinance; seconded by Commissioner Góngora; Ballot vote: 6-0; Absent: Commissioner Wolfson. **Chief Otero to handle.**

Handouts and Reference Materials:

7:04:34 p.m.

R5B An

An Ordinance Amending Chapter 50 Of The Code Of The City Of Miami Beach, Entitled "Fire Prevention And Protection," By Creating Section 50-8 Thereof, To Be Entitled "Fire Alarms, Regulations, Penalties, Enforcement" To Establish Requirements And Fines For False Fire Alarms; Providing For Repealer, Severability, And An Effective Date. <u>5:04 p.m. Second Reading</u> Public Hearing

(Requested by the Finance & Citywide Projects Committee)
(Legislative Tracking: Fire Department)
(First Reading on September 11, 2013)

ACTION: Title of the ordinance read into the record by Rafael E. Granado, City Clerk. Public Hearing held. **Ordinance No. 2013-3815 adopted.** Motion made by Commissioner Weithorn to approve the ordinance; seconded by Commissioner Góngora; Ballot vote: 6-0; Absent: Commissioner Wolfson. **Chief Otero to handle.**

Handouts and Reference Materials:

1. Ad in The Miami Herald – Ad # 809

7:05:19 p.m.

R5C

An Ordinance Amending Appendix A, Entitled "Fee Schedule" For Subsection (A) Of Section 110-168, Entitled "Sanitary Sewer Service Charge," Of Chapter 110 Of The Miami Beach City Code, Entitled "Utilities," Article IV, Entitled "Fees, Charges, Rates And Billing Procedure"; Division 2 Thereof, Entitled "Rates, Fees And Charges," To Increase The Sanitary Sewer Service Charge Imposed By The City; Providing For Codification, Repealer, Severability, And An Effective Date. 5:04 p.m. Second Reading Public Hearing

(Requested by the Finance & Citywide Projects Committee)
(Legislative Tracking: Public Works)
(First Reading on September 11, 2013)

ACTION: Title of the ordinance read into the record by Rafael E. Granado, City Clerk. Public Hearing held. **Ordinance No. 2013-3816 adopted.** Motion made by Commissioner Weithorn to approve the ordinance; seconded by Commissioner Exposito; Ballot vote: 6-0; Absent: Commissioner Wolfson. **Eric Carpenter and Patricia Walker to handle.**

Jimmy Morales, City Manager, explained that Miami-Dade County increased their sewer charges, and in the budget the City is passing this increase on to the customers; it is not stormwater.

Handouts and Reference Materials:

7:07:01 p.m.

SUPPLEMENTAL MATERIAL 2: Memorandum & Ordinance

An Ordinance Amending Part I, Subpart B, Article IX, Related Special Acts, Of The Miami Beach City Code Entitled "Pension System For Disability And Retirement Of Members Of Police And Fire Departments"; Implementing Provisions Of The 2012-2015 Collective Bargaining Agreements Between The City And Fire Fighters Of Miami Beach, IAFF Local 1510, And Miami Beach Fraternal Order Of Police, William Nichols Lodge No. 8; Amending Section 62 Entitled "Definitions"; Amending Section 63 Entitled "Source Of Monies For Fund; Computation Of Liability; Use And Investment Of Fund"; Amending Section 65 Entitled "Computation Of Creditable Service; Service Record"; Amending Section 66 Entitled "Service And Disability Benefits Generally"; Amending Section 67 Entitled "Cost Of Living Adjustment"; Amending Section 79 Entitled "Deferred Retirement Option Plan"; Amending Section 82 Entitled "Military Service"; Creating A New Section 88 Entitled "Benefits For Members Hired On Or After September 30, 2013, Providing For Severability; Repealing All Ordinances In Conflict Therewith; And Providing For An Effective Date. 5:04 p.m. Second Reading Public Hearing

(Sponsored by Commissioner Deede Weithorn)
(Legislative Tracking: Human Resources)
(First Reading on September 11, 2013)
(Memorandum to be Submitted in Supplemental)

ACTION: Title of the ordinance read into the record by Rafael E. Granado, City Clerk. Public Hearing held. **Ordinance No. 2013-3817 adopted.** Motion made by Commissioner Weithorn to approve the ordinance; seconded by Commissioner Exposito; Ballot vote: 6-0; Absent: Commissioner Wolfson. **Sylvia Crespo-Tabak to handle.**

Handouts and Reference Materials:

1. Ad in The Miami Herald – Ad # 809

7:18:25 p.m.

R5E Unclassified Salary Ordinance

An Ordinance Amending Ordinance No. 1605, The Unclassified Employees Salary Ordinance; Abolishing Pay Grade 1 And Pay Grade 2; Abolishing The Classifications Of: General Services Director, Transportation And Concurrency Manager, Neighborhood Services Director, Community/ Economic Development Director, Cultural Affairs & Tourism Development Director, Procurement Division Director, Information Technology Division Director, Code Compliance Division Director, Assistant Director Procurement Division, Service Delivery Manager, Office Associate I And Public Information Officer; Establishing The Classifications Of Tourism, Cultural Affairs And Economic Development Director, Deputy Building Director, Procurement Director, Information Technology Director, Assistant Director Human Resources, Housing And Community Development Director, Infrastructure Division Director, Assistant City Engineer, Assistant Director Procurement, Building Operations Manager, Investigator Supervisor, Community Services Division Director, Administrative Services Manager, Public Safety Special Projects Coordinator, Property Maintenance/Operations Superintendent, Director Of The Office Of Communications, Leasing Specialist, Public Safety Management/Budget Analyst, Performance And Scheduling Manager (City Attorney), Visual Communications Constituent/Commission Aide, Financial Analyst, Public Safety Payroll Administrator, Senior GIS Analyst, And Records Supervisor; Ratifying The Pay Grade Change For The Assistant Director Parking, Assistant Director Parks And Assistant Director Recreation Classifications; And Effective The First Full Pay Period Ending In October 2014, Increasing The Minimum And The Maximum Of Each Pay Grade By Three Percent (3%); And Granting An Across The Board Cost Of Living Adjustment Of Up To Three Percent (3%) For Any Unclassified Employee Whose Base Salary Does Not Exceed The Maximum Of The Pay Range For The Comparable Job Title As Recommended By The 2009 Condrey Classification And Compensation Study "Pay Scale B,"

Subsequently Amended By Seven Percent (7%) In August 2013, By The Consultant; Repealing All Ordinances In Conflict; Providing For Severability, An Effective Date And Codification. **First Reading**

(Sponsored by Commissioner Deede Weithorn) (Legislative Tracking: Human Resources)

ACTION: Title of the ordinance read into the record by Rafael E. Granado, City Clerk. **Ordinance approved on first reading.** Motion made by Commissioner Libbin to approve the ordinance; seconded by Commissioner Exposito; Ballot vote: 5-0; Absent: Commissioners Góngora and Wolfson. Second reading and Public Hearing scheduled for October 16, 2013. Rafael E. Granado to notice. Lilia Cardillo to place on the Commission Agenda when received. **Sylvia Crespo-Tabak to handle.**

Kathie G. Brooks, Assistant City Manager, explained that the item is the classification ordinance for the Unclassified employees. A similar ordinance was adopted for CWA, Fire and Police employees. The City typically adopts amendments to the Unclassified Salary Ordinance at the same time it makes changes to the Classified Salary Ordinance, and incorporates any position that has been reclassified or changed since the ordinance was last amended. After research, it was discovered that it has been several years since the Unclassified Salary Ordinance was updated, and that is why the number of position listed therein is so large. By adopting this ordinance, the Commission will formalize a number of positions that have been in place for a few years, and as with the CWA for FY 14-15, this Commission will approve the 3% COLA for Unclassified employees, which is consistent with what has been done with other labor agreements.

Mayor Bower asked why this is being done two years in advance.

Ms. Brooks explained that this is being done to be consistent with what has been done with the Unions. She clarified that while it does increase the minimum and maximum for each pay grade by 3%, they recommend that if a particular employee is above the maximum of the range recommended by Condrey, that said employee would not get the additional 3% and their salary would remain the same.

Mayor Bower suggested looking at this issue again, because it is not fair. Non-Union employees are being penalized for not being in a Union. The City should not be in the business to pay some employees low and others so high.

Jimmy Morales, City Manager, explained that Condrey actually increased some of the pay scale for some of the Unions

Mayor Bower requested looking into the issue of the Union employees receiving 3% COLA even if they go over the maximum range. **Kathie G. Brooks to handle.**

7:25:49 p.m.

R5F Others Salary Ordinance

An Ordinance Amending Ordinance No. 789, The Classified Employees Salary Ordinance Of The City Of Miami Beach, Florida, As Follows: Providing For The Classifications In Group VI, Not Represented By A Collective Bargaining Unit And Commonly Referred To As "Others"; Amending All Of The Pay Grades By Abolishing Pay Grade 1; Establishing The Classifications Of Fire Inspector I And Seasonal Recreation Aide; And Effective The First Full Pay Period Ending In October 2014, Increasing The Minimum And The Maximum Of Each Pay Grade, By Three Percent (3%); And Granting An Across The Board Cost Of Living Adjustment Of Up To Three Percent (3%) For Any "Others" Employee Whose Base Salary Does Not Exceed The Maximum Of The Pay Range For The Comparable Job Title As Recommended By The 2009 Condrey Classification And Compensation Study "Pay Scale B" And Subsequently Amended By Seven Percent 7% In August 2013 By The Consultant; Repealing All Ordinances In Conflict; Providing For Severability, An Effective Date And Codification. **First Reading**

(Sponsored by Commissioner Deede Weithorn) (Legislative Tracking: Human Resources)

ACTION: Title of the ordinance read by Rafael E. Granado, City Clerk. **Ordinance approved on first reading.** Motion made by Commissioner Libbin to approve the ordinance; seconded by Commissioner Exposito; Ballot vote; 5-0; Absent: Commissioners Góngora and Wolfson. Second reading and Public Hearing scheduled for October 16, 2013. Rafael E. Granado to notice. Lilia Cardillo to place on the Commission Agenda when received. **Sylvia Crespo-Tabak to handle.**

Kathie G. Brooks, Assistant City Manager, clarified that this item is basically the same as the item above (R5E), but it applies to Classified employees that are not members of the Union, employees that are commonly referred to as "Others."

R7 – Resolutions

6:05:24 p.m.

SUPPLEMENTAL MATERIAL 1: Resolution

R7A1 Adopt Final Ad Valorem Millage For General Operating Purposes

A Resolution Adopting: 1) The Final Ad Valorem Millage Of 5.8634 Mills For General Operating Purposes, Which Is Six And Three-Tenth Percent (6.3%) More Than The "Rolled-Back" Rate Of 5.5158 Mills; And 2) The Debt Service Millage Rate Of 0.2529 Mills For Fiscal Year (FY) 2013/14.

5:01 p.m. Second Reading Public Hearing

(Budget & Performance Improvement)

ACTION: Title of the Resolution read into the record. Public Hearing held. Item discussed in conjunction with items R7A2 and R7M. **Resolution No. 2013-28350 adopted.** Motion made by Commissioner Weithorn; seconded by Commissioner Libbin; Roll Call Vote: 6-0; Absent Vice-Mayor Tobin. **John Woodruff to handle.**

TO DO:

- 1. Departments should have the incentive to save and keep the savings; and thereafter the departments should be able to request that the surplus be earmarked as needed with the approval of the City Commission.
- 2. The Administration should review overtime (OT) numbers on a monthly basis; and either at Finance and Citywide Projects Committee or via an LTC the Administration should report the over budget amounts. The Administration is to track the figures and monitor. The Administration is to bring back any amendments needed to the City Commission prior to exceeding the overtime amounts included in the resolution.

- 3. When departments are running out of money; if an amendment is needed bring it to the Commission ahead of time.
- 4. Hold \$100,000 of the carry over Special Event fund, and not spend it until it is confirmed that the VCA is funding the World Outgames in 2017.

Mayor Bower asked if they had agreed to lower the millage a bit more.

Jimmy L. Morales, City Manager, stated that this reflects the original 0.0275 mill decrease, plus the recent .2000 mil decrease, for a total decrease of 0.2275 mill decreases.

Commissioner Góngora asked if the millage was reduced by the surplus of \$550,000 as instructed in the Commission Workshop. Mr. Woodruff confirmed that such a reduction was included in the budget currently before the Commission.

Discussion held.

John Woodruff, Budget and Performance Improvements Director, gave a PowerPoint Presentation. Mr. Woodruff explained that the operating budget last year was 6.099; and this year is 5.8634, and that is a decrease of 0.2275. (Click here for PowerPoint Presentation.)

Commissioner Exposito asked the status of the new positions. Mr. Woodruff explained that the Commission, in an attempt to be cautious, set aside the budget amount for these new positions, but has not approved these additions until they have the appropriate information to make an informed decision.

Jimmy L. Morales, City Manager, stated that the enhancements are subject to the \$1.3 million, and at the last City Commission meeting this was referred to the Finance and Citywide Projects Committee in October. The new positions are budgeted, but the funds are in a reserve. No positions will be created or filled pending City Commission approval. He added that the Commission will have full discretion to approve all or none of the positions, and any money leftover can go to the Reserves or back to the funds that they came from, at the Commission's discretion.

Commissioner Góngora explained that at Finance Committee they would give the Administration direction as to what positions to create or not create.

Jimmy L. Morales, City Manager, added that in the Budget Book, and again when the item goes to the Finance Committee, the City Commission will have his enhancement recommendations, as well as the enhancement requests from those departments that were not recommended by the City Manager, plus some new items.

Commissioner Góngora inquired that if this year's property taxes are generating \$25 million less than in 2006 and 2007, is the reason why the City is able to fund the budget primarily the increase in resort taxes and other sources of revenues. Mr. Woodruff explained that it is due to the increase in resort taxes and other sources of revenues, as well as employee givebacks and reductions over the years; approximately \$77 million combined in seven years.

Commissioner Weithorn reviewed the budget amendment sent via LTC in detail and found that the Police Department's overtime budget was over budgeted by \$1 million and yet the Administration budgeted less for overtime this year. She has some serious concerns over the overtime numbers, and being that today is September 30, she is not asking to change the budget, but she does not want to wait until the first quarter numbers are back to see how they are tracking. There are two line items that she has issues with; one of them being personnel shortage line, and suggested that they look at these numbers on a monthly basis. She is asking to look at

this at either Finance and Citywide Projects Committee or via an LTC, to know how much they are over budget, how they are tracking the numbers and requested that this be monitored.

TO DO: The Administration should review overtime (OT) numbers on a monthly basis; and either at Finance and Citywide Projects Committee or via an LTC the Administration should report the over budget amounts. The Administration is to bring back any amendments needed to the City Commission prior to exceeding the overtime amounts included in the resolution. **John Woodruff to handle.**

Commissioner Weithorn added that she hopes the City purchases new chairs for the dais as part of this year's budget. **Anthony Kaniewski to handle.**

Commissioner Libbin stated that the way the resolution reads, it states that there could be no expenditure of overtime dollars that are not budgeted without approval of the Commission, and he does not necessarily think it is a wise action that they want to pass. The Commission can be getting monthly reports and do a sort of Congressional Budget Amendment, but he does not think that it is wise to tie the hands of either the Police Chief, the Fire Chief or the City Manager in case of an emergency to have to await approval from the City Commission to get money. He does not recommend passing it the way it reads and suggested thinking this through, receiving ongoing reports and consider expanding the limits, other than a Commission action requiring an increase.

Jimmy L. Morales, City Manager, explained that the overtime will be monitored and as they get close to the limit, they will request budget amendments for approval. **John Woodruff to handle.**

Commissioner Libbin suggested considering a resolution that the departments are held to a bottom line budget, and if they need to exceed that bottom line then the department directors can make recommendations as to where the money is going to come from.

Mayor Bower added that the Police Department had money set aside for new positions that they re-budgeted for overtime. The Police Department always has positions open, they do not hire the new officers and they instead use the money that was earmarked to hire the new positions to pay the overtime. The Police Department sticks to the budget bottom line by not hiring new police officers. The issue is that the Police Department ought to hire the police officers, which would lower the overtime and then come forward if they are running out of money. An analysis is needed in advance to find out when the Police Department is reaching the overtime limit. She thinks it wise to make the Police Department stick to the bottom line and not be allowed to transfer the budget money.

Vice-Mayor Tobin stated that what they are talking about is a systematic way of making the budget balance, not only by not hiring new officers, but also by keeping certain open positions such as Majors, Captains and Lieutenants. They are not talking about an emergency, since they have already budgeted millions of dollars for overtime. He explained that the surplus from not filling positions is used as a slush fund to be spent any way the Police Department wants. From now on, Vice-Mayor Tobin suggested, the overtime budget is not to be used unless it is approved by the City Manager.

John Woodruff, in answering Mayor Bower's question, explained that in 2012 the overtime spent was \$3.9 million; in 2013 is budgeted for \$2.8 million. Commissioner Weithorn explained that this is why she is concerned that this item has not been budgeted appropriately. They need to get the feedback, monitor it, and if there is something wrong with the budget, they need to amend it.

Mayor Bower explained that the understanding is that they need to keep the budget inline and keep residents and citizens safe.

Jimmy L. Morales, City Manager, stated that by previously approving positions to 911, it would reduce overtime significantly and improve safety; they are hoping that by adding the positions and filling them, they will actually reduce overtime and provide better services.

Discussion continued.

Vice-Mayor Tobin stated that if the departments have savings and come in under budget that they should be able to keep the savings. He wants the departments to have the incentive to save and keep the savings. They need to come to the City Commission and request that the surplus be earmarked for something for the following fiscal year.

TO DO: Departments should have the incentive to save and keep the savings; and thereafter the departments should be able to request that the surplus be earmarked as needed with the approval of the City Commission. **John Woodruff to handle.**

Discussion continued.

John Woodruff, Budget and Performance Improvements Director, asked for clarification, if the budget resolution should be amended to reflect the emergency situation language.

Mayor Bower explained that the amendment to the resolution is to add language stating that when running out of money not to wait until the last penny; if an amendment is needed, bring to the Commission ahead of time, and not wait until it becomes an emergency.

Discussion continued.

Mayor Bower stated that she needs to confirm if the Miami Beach Visitors and Convention Authority (MBVCA) will be giving money for The World Outgames Miami Beach 2017.

Grisette Roque Marcos, Executive Director, Miami Beach Visitor and Convention Authority, stated that they have met with World Outgames on several occasions, and the VCA is very excited about the prospect of the games coming to Miami Beach in 2017. The VCA Board needs to discuss the mechanics of how they can approach and fund projects next week. She has no doubt that the VCA Board will fund this project because it brings an enormous amount of people to the destination and fills many hotel rooms.

Commissioner Weithorn stated that if for some reason the VCA does not give them the money, she suggested including a budget amendment to fund it. She does not want to put this in the budget and she really thinks that the VCA has the willingness to do it and the right skills set.

Jimmy L. Morales, City Manager, explained that there is \$100,000 fund for special events that were carried over from last year budget, and they can always come back with a budget amendment.

Discussion continued.

Commissioner Weithorn requested to hold \$100,000 of the carry over in the Special Events Fund, and not spend it until they know that the VCA will be funding the World Outgames in 2017. **John Woodruff to handle.**

Commissioner Libbin stated that the VCA had a significant surplus last year that they need to start spending now.

Grisette Roque Marcos, Executive Director-Miami Beach Visitor and Convention Authority, stated that it is not difficult to obtain the necessary approvals. The VCA just needs to go through their internal Board process.

Handouts and Reference Materials:

- 1. Ad in The Miami Herald Ad # 809
- 2. PowerPoint Presentation

6:36:07 p.m.

SUPPLEMENTAL MATERIAL 1: Resolution

R7A2 Adopt Final Budgets For General, G.O., RDA, Enterprise, And Internal Service Funds
A Resolution Adopting Final Budgets For The General, G.O. Debt Service, RDA Ad Valorem
Taxes, Enterprise, And Internal Service Funds For Fiscal Year (FY) 2013/14. 5:01 p.m. Second
Reading Public Hearing

(Budget & Performance Improvement)

ACTION: Title of the Resolution read into the record. Public Hearing held. Item discussed in conjunction with item R7A1. **Resolution No. 2013-28351 adopted.** Motion made by Commissioner Weithorn; seconded by Commissioner Exposito; Roll Call Vote: 6-0; Absent: Vice-Mayor Tobin. **John Woodruff to handle.**

See discussion with item R7A2.

Alberto Machado spoke.

Handouts and Reference Materials:

1. Ad in The Miami Herald – Ad # 809

6:41:08 p.m.

SUPPLEMENTAL MATERIAL 1: Resolution

R7B1 Adopt Final Ad Valorem Millage for Normandy Shores Local Government

A Resolution Of The Board Of Directors Of The Normandy Shores Local Government Neighborhood Improvement District Adopting The Final Ad Valorem Millage Of 1.2687 Mills For Fiscal Year (FY) 2013/14 For The Normandy Shores Local Government District, Which Is Nineteen Percent (19.0%) More Than The "Rolled-Back" Rate Of 1.0664 Mills. <u>5:02 p.m. Second</u> Reading Public Hearing

(Budget & Performance Improvement)

ACTION: Title of the Resolution read into the record. Public Hearing held. **Resolution No. 2013-28352 adopted.** Motion made by Commissioner Libbin; seconded by Commissioner Góngora; Roll Call Vote: 7-0. **John Woodruff to handle.**

Handouts and Reference Materials:

6:42:13 p.m.

SUPPLEMENTAL MATERIAL 1: Resolution

R7B2 Adopt Final Operating Budget For Normandy Shores Local Government

A Resolution Of The Board Of Directors Of The Normandy Shores Local Government Neighborhood Improvement District Adopting The Final Operating Budget For Fiscal Year (FY) 2013/14. 5:02 p.m. Second Reading Public Hearing

(Budget & Performance Improvement)

ACTION: Title of the Resolution read into the record. Public Hearing held. **Resolution No. 2013-28353 adopted.** Motion made by Commissioner Libbin; seconded by Commissioner Weithorn; Roll Call Vote: 7-0. **John Woodruff to handle.**

Handouts and Reference Materials:

1. Ad in The Miami Herald – Ad # 809

6:42:52 p.m.

SUPPLEMENTAL MATERIAL 1: Resolution

R7C Adopt Final FY 2013/14-2017/18 Capital Improvement Plan & Capital Budget

A Resolution Adopting The Final Capital Improvement Plan For Fiscal Years (FY) 2013/14-2017/18 And Adopting The Final Capital Budget For FY 2013/14. <u>5:03 p.m. Second Reading Public Hearing/Joint City Commission & Redevelopment Agency</u>

(Budget & Performance Improvement)

ACTION: Item heard in conjunction with RDA Item 1B. Title of the Resolution read into the record. Public Hearing held. **Resolution No. 2013-28354 adopted.** Motion made by Commissioner Weithorn; seconded by Commissioner Libbin; Roll Call Vote: 6-0; Absent: Vice-Mayor Tobin. **John Woodruff to handle.**

Handouts and Reference Materials:

6:43:44 p.m.

SUPPLEMENTAL MATERIAL 1: Resolution

R7D Adopt FY 2013/14 Final Budgets For Special Revenue Funds

A Resolution Adopting Fiscal Year (FY) 2013/14 Final Budgets For Special Revenue Funds For Resort Tax; The 7th Street Parking Garage Operations; The 5th And Alton Parking Garage Operations; Art In Public Places (AiPP), Tourism And Hospitality Scholarship Program, Green/Sustainability Funds, Waste Hauler Additional Services And Public Benefit Funds, Education Compact Funds, Red Light Camera Funds, And Emergency 911 Funds. <u>5:03 p.m. Second Reading Public Hearing</u>

(Budget & Performance Improvement)

ACTION: Title of the Resolution read into the record. Public Hearing held. **Resolution No. 2013-28355 adopted as amended.** Motion made by Commissioner Weithorn; seconded by Commissioner Góngora; Roll Call Vote: 6-0; Absent: Vice-Mayor Tobin. **John Woodruff to handle.**

Amendments:

- Keep arts budget whole as in the FY 2011-2012 actuals.
- Any excess is to go to transportation fund, to allow the fund to grow (this includes special revenues and includes resort tax).
- If unable to come to agreement with MDTA, allow Administration to look at the option of using private operators

Kathie G. Brooks, Assistant City Manager, stated that at the Committee of the Whole, direction was given regarding the addition of the fifth category for Transportation to the 1% Resort Tax Revenue Contributions, to budget the contribution to the Arts at the same level as FY 2011-2012 actuals, and eventually split the remaining four (4) categories to allow the Transportation fund to grow.

Commissioner Libbin asked for a clarification. This is going to create somewhere in the order of \$1 million, and the target for the transit North Beach Circulator originally was a ten minute headway, rather than 15 minute headway. He asked if this is a six-month trial and if they have a trial date.

Kathie G. Brooks, Assistant City Manager, stated that once they negotiate and find out how much funding the County is willing to put in, they would bring the item to Commission. She explained that the target date is between January and June 2013, but they are still in negotiations. Discussion held.

Jimmy L. Morales, City Manager, recommended, in case they are not able to come to an agreement with MDTA, that the Administration be allowed to look at other options, such as private operators. There was consensus by the City Commission on this recommendation.

Handouts and Reference Materials:

6:48:39 p.m.

SUPPLEMENTAL MATERIAL 1: Resolution

R7E Adopt Final FY 2013/14 PTP Budget & South Beach Concurrency Mitigation Funds

A Resolution Adopting The Final Budget Of \$1,200,000 From Fiscal Year (FY) 2013/14 People's Transportation Plan Funds And \$87,000 From FY 2013/14 South Beach Concurrency Mitigation Funds, To Fund The Final Operating Budget For The South Beach Local In Miami Beach; And Further Adopting The Final Budget Of \$301,000 From FY 2013/14 People's Transportation Plan Funds For Administrative And Technical Operating Expenditures, As Part Of The Five Percent (5%) Allowable For Administrative Assistance And Technical Assistance. 5:03 p.m. Second Reading Public Hearing

(Public Works)

ACTION: Title of the Resolution read into the record. Public Hearing held. **Resolution No. 2013-28356 adopted.** Motion made by Commissioner Weithorn; seconded by Commissioner Exposito; Roll Call Vote: 6-0; Absent: Vice-Mayor Tobin. **John Woodruff to handle.**

Jimmy L. Morales, City Manager, introduced the item.

Commissioner Libbin asked if the Administrative funds are allocated specifically to salary, and if these salary saving will otherwise be in the General Fund. Ms. Brooks responded in the affirmative.

Commissioner Libbin emphasized that the funds are allocated for people working in those positions. Ms. Brooks responded "yes."

Handouts and Reference Materials:

1. Ad in The Miami Herald – Ad # 809

6:50:34 p.m.

SUPPLEMENTAL MATERIAL 1: Resolution

R7F Adopt Miami Beach Cultural Arts Council's FY 2013/14 Final Budget

A Resolution Authorizing The Adoption Of The Miami Beach Cultural Arts Council's Fiscal Year (FY) 2013/14 Budget In The Amount Of \$1,470,000. <u>5:03 p.m. Second Reading Public Hearing</u> (Tourism, Culture & Economic Development)

ACTION: Title of the Resolution read into the record. Public Hearing held. **Resolution No. 2013-28357 adopted.** Motion made by Commissioner Góngora; seconded by Commissioner Exposito; Roll Call Vote: 6-0; Absent: Vice-Mayor Tobin. **John Woodruff to handle.**

Max Sklar, Tourism and Cultural Development Director, explained that this is the total budget, and \$710,000 from these funds are for grants, salary, marketing, arts education program, and it comes out of the Resort Tax.

Handouts and Reference Materials:

6:52:11 p.m.

R7G Adopt Police Special Revenue Account Final Budget

A Resolution Adopting The Fiscal Year (FY) 2013/14 Police Special Revenue Account Final Budget In The Amount Of \$75,000 For The Purchase Of Those Items Set Forth In Exhibit "A," And Such Account Funded By Unclaimed Evidence Currently Held In The Police Special Revenue Account. 5:03 p.m. Second Reading Public Hearing

(Police)

ACTION: Title of the Resolution read into the record. Public Hearing held. **Resolution No. 2013-28358 adopted.** Motion made by Commissioner Weithorn; seconded by Commissioner Góngora; Roll Call Vote: 6-0; Absent: Vice-Mayor Tobin. **John Woodruff to handle.**

Handouts and Reference Materials:

1. Ad in The Miami Herald – Ad # 809

6:52:57 p.m.

R7H Adopt Police Confiscation Trust Fund Final Budget

A Resolution Adopting The Police Confiscation Trust Fund Final Budget For Fiscal Year (FY) 2013/14 In The Amount Of \$724,000, To Be Funded From State Confiscated Funds In The Amount Of \$235,000 And Federal Justice Confiscated Funds In The Amount Of \$489,000, For The Appropriation And Expenditure Of Those Items Set Forth In Exhibit "A," Which Shall Be Funded Through The Police Confiscation Trust. 5:03 p.m. Second Reading Public Hearing (Police)

ACTION: Title of the Resolution read into the record. Public Hearing held. **Resolution No. 2013-28359 adopted as amended.** Motion made by Commissioner Exposito; seconded by Commissioner Weithorn; Roll Call Vote: 5-0; Absent: Vice-Mayor Tobin and Commissioner Wolfson. Patricia Walker to appropriate the funds. **John Woodruff to handle.**

Amendment

Add \$47,000 for the PAL boxing program in North Beach.

Mayor Bower asked where the funds for the K-9 dogs are coming from, and what moneys are used for when the dogs retire.

Chief Martinez explained that the funds for K-9 dogs are in the General Fund; however, to replace the dogs what has happened in the last two years is that the Police Department has received donations from the private sector. He explained that usually the handler of the dog, 99% of the time, takes the dog home after it is retired from service and he/she is responsible for the animal after that point.

Discussion held.

Commissioner Exposito explained that once a police dog is retired the officer handling that dog usually adopts it and maintains it, and Mayor Bower is asking if there are any funds that could be given to the person who adopts these retired dogs who have served the community, in order to assist with the dog's day-to-day maintenance. Discussion continued. **City Manager's Office to bring proposal.**

Jimmy L. Morales, City Manager, added an amendment to this item, for the record, that based on discussion regarding the PAL boxing program, this is the fund that is appropriate, and they will amend it to add \$47,000 for the PAL boxing program in North Beach. Discussion continued.

Handouts and Reference Materials:

1. Ad in The Miami Herald – Ad # 809

6:58:14 p.m.

R7I Adopt Police Training And School Resources Fund Final Budget

A Resolution Adopting The Fiscal Year (FY) 2013/2014 Police Training And School Resources Fund Final Budget In The Amount Of \$35,000. <u>5:03 p.m. Second Reading Public Hearing</u> (Police)

ACTION: Title of the Resolution read into the record. Public Hearing held. **Resolution No. 2013-28360 adopted.** Motion made by Commissioner Weithorn; seconded by Commissioner Góngora; Roll Call Vote: 5-0; Absent: Vice-Mayor Tobin and Commissioner Wolfson. **John Woodruff to handle.**

Handouts and Reference Materials:

1. Ad in The Miami Herald – Ad # 809

6:58:54 p.m.

SUPPLEMENTAL MATERIAL 1: Resolution

And Enterprise Fund Budgets. **5:03 p.m. Public Hearing**

(Budget & Performance Improvement)

ACTION: Title of the Resolution read into the record. Public Hearing held. **Resolution No. 2013-28361 adopted.** Motion made by Commissioner Weithorn; seconded by Commissioner Góngora; Roll Call Vote: 5-0; Absent: Vice-Mayor Tobin and Commissioner Wolfson. **John Woodruff to handle.**

Handouts and Reference Materials:

1. Ad in The Miami Herald – Ad # 809

6:59:37 p.m.

R7K A Resolution Adopting And Appropriating The Fourth Amendment To The Police Confiscation Trust Budget For Fiscal Year 2012/13 In The Amount Of \$10,000, To Be Funded From The Proceeds Of State Confiscated Funds, For The Appropriation And Expenditure Of Those Items Set Forth In Exhibit "A," Which Shall Be Funded Through The Police Confiscation Trust Fund. 5:03 p.m. Public Hearing

(Police)

ACTION: Title of the Resolution read into the record. First and only Public Hearing. Public Hearing held. **Resolution No. 2013-28362 adopted on First Reading.** Motion made by Commissioner Libbin; seconded by Commissioner Weithorn; Roll Call Vote: 5-0; Absent: Vice-Mayor Tobin and Commissioner Wolfson. Patricia Walker to appropriate the funds. **John Woodruff to handle.**

Jimmy L. Morales, City Manager, explained that the item is a First and Only Hearing for an additional \$10,000 in connection with expenses incurred in processing State confiscated cases.

Handouts and Reference Materials:

7:27:02 p.m.

R7L A Resolution Approving An Allocation, In The Amount Of \$651,000, From FY 2013/14 General Fund Account No. 011.0930; Said Allocation To Be Provided And Utilized By The Friends Of The Bass Museum, Inc., For The Purpose Of Continuing To Fund And Provide Certain Operating Expenses At The Bass Museum Of Art, Through September 30, 2014; And Further Authorizing The City Manager To Execute A New Letter Agreement With The Friends Of The Bass Museum, Inc., Memorializing The Parties' Respective Obligations With Regard To Certain Management And Operation Responsibilities Of The Bass Museum Through September 30, 2014.

(Tourism, Cultural & Economic Development)

ACTION: Title of the Resolution read into the record. **Resolution No. 2013-28363 adopted.** Motion made by Commissioner Weithorn; seconded by Commissioner Libbin; Voice vote; 5-0; Absent: Commissioners Góngora and Wolfson. **Max Sklar to handle.**

Commissioner Weithorn explained that procedurally she can move R7L through R7R (excluding R7Q, which was previously heard) in one motion, and she would like to move it as such. There was consensus on the floor. Rafael E. Granado, City Clerk, read the titles of the Resolutions into the record.

City Clerk's Note: Items R&L, R7M, R7N, R7O, R7P, R7R1 and R7R2 were combined and moved with one motion. The Clerk read the short title for each item prior to the vote.

6:31:29 p.m.

SUPPLEMENTAL MATERIAL 1: Resolution

R7M A Resolution Adopting The Miami Beach Visitor And Convention Authority (MBVCA) FY 2013/14 Budget, In The Amount Of \$2,664,000.

(Tourism, Cultural & Economic Development)

ACTION: Title of the Resolution read into the record. Item heard in conjunction with item R7A1. **Resolution No. 2013-28364 adopted.** Motion made by Commissioner Weithorn; seconded by Commissioner Libbin; Roll Call Vote: 6-0; Absent: Vice-Mayor Tobin. **Max Sklar to handle.**

City Clerk's Note: Items RTL, R7M, R7N, R7O, R7P, R7R1 and R7R2 were combined and moved with one motion. The Clerk read the short title for each item prior to the vote.

7:27:02 p.m.

SUPPLEMENTAL MATERIAL 1: Resolution

A Resolution Accepting The City Manager's Recommendation, And Approving The Cultural Arts Council's Funding Recommendations, And Awarding \$710,000 In Cultural Grants, For Fiscal Year 2013/14, As Identified In The Attached Exhibit "A"; And Further Authorizing The Mayor And City Clerk To Execute Said Grant Agreements, And Make The Award Of Said Grant Monies Subject To And Contingent Upon The Approval Of The Cultural Arts Council's Budget For The Fiscal Year 2013/14.

(Tourism, Cultural & Economic Development)

ACTION: Title of the Resolution read into the record. Public Hearing held. **Resolution No. 2013-28365 adopted.** Motion made by Commissioner Weithorn; seconded by Commissioner Libbin; Voice vote; 5-0; Absent: Commissioners Góngora and Wolfson. **Max Sklar to handle.**

City Clerk's Note: Items RTL, R7M, R7N, R7O, R7P, R7R1 and R7R2 were combined and moved with one motion. The Clerk read the short title for each item prior to the vote.

Prepared by the City Clerk's Office Page No. 16
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7:27:02 p.m.

R7O A Resolution Accepting The Recommendation Of The Finance And Citywide Projects Committee (FCWPC) To Maintain Fiscal Year 2014 Living Wage Rate Levels Consistent With Fiscal Year 2013 Rate Levels.

(Procurement)

ACTION: Title of the Resolution read into the record. **Resolution No. 2013-28366 adopted.** Motion made by Commissioner Weithorn; seconded by Commissioner Libbin; Voice vote; 5-0; Absent: Commissioners Góngora and Wolfson. **Alex Denis to handle.**

City Clerk's Note: Items RTL, R7M, R7N, R7O, R7P, R7R1 and R7R2 were combined and moved with one motion. The Clerk read the short title for each item prior to the vote.

7:27:02 p.m.

SUPPLEMENTAL MATERIAL 1: Resolution

R7P A Resolution Setting A Public Hearing To Adopt The Second Amendment To The Special Revenue Fund Budgets For Fiscal Year (FY) 2012/13.

(Budget & Performance Improvement)

ACTION: Title of the Resolution read into the record. **Resolution No. 2013-28367 adopted.** Motion made by Commissioner Weithorn; seconded by Commissioner Libbin; Voice vote; 5-0; Absent: Commissioners Góngora and Wolfson. **John Woodruff to handle.**

City Clerk's Note: Items RTL, R7M, R7N, R7O, R7P, R7R1 and R7R2 were combined and moved with one motion. The Clerk read the short title for each item prior to the vote.

7:08:50 p.m.

SUPPLEMENTAL MATERIAL 2: Memorandum

R7Q Resolution Approving The Terms Of A License Agreement Between The City And Destination Brands For An Exclusive Miami Beach Sun Care Line, Which Is Attached As Exhibit "A," With Said Agreement Having An Initial Term Of Five (5) Years; And Authorizing The Mayor And City Clerk To Execute The Final Agreement; Provided, However, That In The Event That The Final Negotiated Agreement Includes Any Term Or Terms Which Substantially Deviate From The Approved Substantive Terms (As Referenced In The Attached Exhibit "A"), Or Contain New And/Or Additional Terms Which, In The City Manager And City Attorney's Opinion, Materially Alter The Proposed Transaction, Then Requiring That The Final Negotiated Agreement To Be Brought To The City

(Tourism, Culture And Economic Development)
(Memorandum to be Submitted in Supplemental)

ACTION: Resolution No. 2013-28368 adopted. Motion made by Commissioner Góngora; seconded by Commissioner Weithorn; Voice vote; 6-0; Absent: Commissioners Wolfson. **Max Sklar to handle.**

Max Sklar, Tourism and Cultural Development Director, introduced the item.

Mayor Bower asked why this item is on the agenda when she thought it would be budget items only.

Max Sklar, Tourism and Cultural Development Director, stated that this is time sensitive because in order for the sun care line to be in the market for the 2014 season, time is needed for manufacturing and signing contracts with the retailers.

Mayor Bower stated that she is surprised, and that she did not go to agenda review because all the items were supposed to be budget items only. If everyone is happy with this item, she may vote for it, but she does not appreciate a contract placed on the budget agenda when she specifically asked that there be only items related to budget. She added that somebody could have notified her that items not budget related were on the agenda. She stated that she will walk out of the room and you all can vote on it, as she does not wish to vote on an item that she is not prepared on.

Commissioner Weithorn explained that the only thing the Finance and Citywide Projects Committee changed was the net sales vs. profit, which is a cleaner item.

Discussion held.

Commissioner Góngora stated that this is in the best interest of the City and has been discussed several times at the Finance and Citywide Projects Committee. He feels comfortable doing this.

All the members of the Finance Committee, Commissioners Weithorn, Exposito and Góngora stated that they are in support of the item.

7:27:02 p.m.

R7R Independent Contractor Agreements

A Resolution Authorizing The City Manager, On Behalf Of The City, To Enter Into Certain Independent Contractor Agreements For Professional And Other Services, As Required And As The City Manager Deems In The Best Interest Of The City, Subject To And Contingent Upon The Following Parameters: 1) The City Manager Shall Only Enter Into Contracts For Such Professional And Other Services To Provide Services And/Or Work Related To Vacant Budgeted Positions, As Identified In The City's Approved Fiscal Year (FY) 2013/2014 Annual Budget; 2) The Amount Of The Fee And/Or Other Compensation To Be Paid By The City Under Such Contract(s) Shall Not Exceed The Authorized Amount For The Respective Position/ Classification, As Set Forth, Respectively, In The City's Classified Or Unclassified Salary Ordinance (As The Case May Be); 3) The Term Of Any Independent Contractor Agreement Authorized Herein Shall Not Extend Beyond The End Of FY 2013/2014 (September 30, 2014); 4) At A Minimum, The City Manager Shall Require That Any Independent Contractor Agreement Entered Into Pursuant To This Resolution Shall Utilize The City's Standard Form For Independent Contractors (As Attached To This Resolution), Provided That The City Manager May Incorporate Additional Terms, Which May Be More Stringent Than The City's Form, But Not More Lenient; And 5) Providing That The Authority Granted To The City Manager Pursuant To This Resolution Shall Be Brought To The City Commission For Renewal Annually As Part Of The Annual Operating Budget Approvals.

ACTION: Resolution No. 2013-28369 adopted. Motion made by Commissioner Weithorn; seconded by Commissioner Libbin; Voice vote; 5-0; Absent: Commissioners Góngora and Wolfson. Sylvia Crespo-Tabak to handle.

Mayor Bower asked what this item was for.

Kathie G. Brooks, Assistant City Manager, explained the item. She stated that the two items are approved on a yearly basis, allowing the City Manager to enter into certain specified Independent Contractor Agreements.

City Clerk's Note: Items RTL, R7M, R7N, R7O, R7P, R7R1 and R7R2 were combined and moved with one motion. The Clerk read the short title for each item prior to the vote.

2. A Resolution Authorizing The City Manager, On Behalf Of The City, To Enter Into Certain Independent Contractor Agreements For The Following Services, As Required And As The City Manager Deems In The Best Interest Of The City: Athletics Instruction/Coaching/ Refereeing Including But Not Limited To The Following Categories: Baseball, Softball, Soccer, Gymnastics, Cheerleading, Volleyball; Ice Skating, Hockey, Swimming, Ice Guards, Aerobics Instruction; Fitness Instruction; Arts/Music/Cultural/Drama Instruction And Or Instrument Repair; Computer/ Media Services Including But Not Limited To Instruction And Repair; Summer Camp Instruction; Special Needs Children Instruction; Instruction/Tutoring Including But Not Limited To Education; Cotillion; Speech, Debate, Social Skills, Literacy, Math And SAT; Fitness Classes Including But Not Limited To Aerobics, Zumba, Weight Room, Weight Loss, General Fitness Instruction, Adult And Youth Boot Camp And Baby Boot Camp; School Liaison Officers; Resident Project Representatives (RPR); Community/Public Information Services; Construction Cost Estimating/ Consulting Services; Video Production Services; Photography/Videography Services; Graphic Design Services; Program Monitor Services; Cost Allocation Service; Job Audits; Step III Disciplinary Grievance Hearing Officer; Auditors; Historical Research; Latent Examiner Services; Medical Director And Accreditation Services/Support; Psychological And Testing Services; Professional Training Services Including But Not Limited To Sexual Harassment, Diversity And Team Building; Provided Further That The City Manager Shall Be Authorized To Negotiate, Enter Into, And Execute The Aforestated Agreements Subject To The Following Minimum Parameters: 1) The Amount Of The Fee And/Or Other Compensation To Be Paid By The City Under Such Agreement(s) Shall Not Exceed The Authorized Amount For The Respective Services, As Set Forth In The City's Approved Fiscal Year (FY) 2013/2014 Annual Budget; 2) The Term Of Any Services Agreement Authorized Herein Shall Not Extend Beyond The End Of FY 2013/2014 (September 30, 2014); 3) At A Minimum, The City Manager Shall Require That Any Agreement Entered Into Pursuant To This Resolution Shall Utilize The City's Standard Form Independent Contractor Agreement (As Attached To This Resolution), Provided That The City Manager May Incorporate Additional Terms, Which May Be More Stringent Than The City's Form, But Not More Lenient; And 4) Providing That The Authority Granted To The City Manager Pursuant To This Resolution Shall Be Brought To The City Commission For Renewal Annually As Part Of The Annual Operating Budget Approvals.

(Human Resources)

ACTION: Resolution No. 2013-28370 adopted. Motion made by Commissioner Weithorn; seconded by Commissioner Libbin; Voice vote; 5-0; Absent: Commissioners Góngora and Wolfson. Sylvia Crespo-Tabak to handle.

City Clerk's Note: Items RTL, R7M, R7N, R7O, R7P, R7R1 and R7R2 were combined and moved with one motion. The Clerk read the short title for each item prior to the vote.

R9 - New Business and Commission

SUPPLEMENTAL MATERIAL 2: Revised item

R9A Discussion Regarding The Florida Third District Court Of Appeal Decision In: <u>Let Miami Beach</u>

<u>Decide v. City Of Miami Beach And SBACE, LLC,</u> Third District Court Of Appeal, Case #3D132243; Lower Tribunal Case No. 13-025234 CA13.

(City Attorney's Office)

R9A The Committee Of The Whole Will Meet At 5:00 P.M. On September 30, 2013 At The City Manager's Office Large Conference Room To Discuss The Florida Third District Court Of Appeal Decision In: Let Miami Beach Decide v. City Of Miami Beach And SBACE, LLC, Third District Court Of Appeal, Case #3D13-2243; Lower Tribunal Case No. 12-025234 CA 13.

(City Attorney's Office) (Revised Item)

The Committee of the Whole was called to order at 5:37 p.m.

All members of the City Commission were present.

Jose Smith, City Attorney, introduced the item. Mr. Smith explained that this was a Committee of the Whole meeting to discuss the Third District Court of Appeals' decision in the case of <u>Let Miami Beach Decide v. City of Miami Beach and SBACE, LLC</u>. The City Commission has previously received a copy of the Court's opinion.

The Court in construing section 1.03(b) of the City of Miami Beach Charter, held that in order to approve a lease under that section, the voters must be given notice of the material terms of the lease they are being asked to approve; and because the lease approval question fails to give the voter such information, or by failing to refer voters to records providing such information, it does not qualify as a proper ballot question to obtain voter approval. The Court went on to hold that the fact that the City was in the process of negotiating an LOI is not sufficient, as the LOI does not provide sufficient information to the public and is not binding on the parties.

Mr. Smith added that he thinks it is laudable and good public policy to provide the voters with this information before the voters get an opportunity to vote on an issue of this nature. However, Mr. Smith stated, for the record, that in 2004 when this Charter provision was adopted by the City Commission and put out for referendum, it was in the wake of the 72nd Streef fiasco with the Related Companies, and the Commission at the time, of which Mr. Smith was a Commissioner, felt that the action of going forward with a lease did not require that there be an actual lease presented to the voters. In fact, that very same year the City put out an auction for property on Normandy Shores without putting a contract on the ballot, without knowing the terms of what the City would be getting in that action. The way the City has always interpreted that section of the Charter was that there was no necessity to have a formal written lease or a development agreement in place before the referendum. Obviously, the Court disagreed, and Mr. Smith respects the Court's decision. Mr. Smith has looked at the possibility, to give the City Commission the option, of either appealing the decision to the Florida Supreme Court or asking the Appellate Court for a rehearing. Mr. Smith's recommendation is that there is no basis for an appeal; he has looked at the Appellate Rules and there is no jurisdiction in the Florida Supreme Court to entertain this appeal and the Third District Court specifically stated that they would not entertain a rehearing. Therefore, they are stuck with the decision. Mr. Smith does not believe there is anything more than the City can do legally, except that the City must follow the holding, which is that on any lease of the Convention Center to a developer that the material elements of that lease are in place so the voters know what the deal is before they vote on it. Mr. Smith opines that the City should move forward with their developer partner and see if this opinion has any effect on their plans for the Convention Center.

Commissioner Libbin inquired if the question on the ballot has to outline all the terms of the lease in 75 words. Mr. Smith responded "No." Raul J. Aguila, Chief Deputy City Attorney, explained that the Third District Court of Appeals specifically stated that it was not necessary to include all the terms of the lease in the ballot question; however, in regards to this, the Court said that there are certain minimum material terms that must be included, which are, for example, the term of the lease, the identity of the developer, the purpose, the amount of rent, the square footage, and for the air rights lease include the amount of air rights above the Convention Center that they are leasing. What the Court said going forward is that the City has to either provide the voters with the material terms of the lease, or it has to let the voters know where they can find those materials terms; for example, by negotiating the lease and having a copy available in the City Clerk's Office, so a voter who wishes to inform him or herself on the ballot question can go to the City Clerk's Office and review the terms of the lease prior to casting a vote.

Commissioner Góngora inquired if anyone had heard from the developer since the opinion was issued. City Manager Jimmy L. Morales stated that his office has had the following communication with the developer: They have communicated with the developer as per direction of the City Commission that the City is still committed to go forward, and the City is viewing this as just a change as to when the election/referendum will occur. The developer has had many questions, as the Commission knows the Mayor has circulated a memo where she has asked to get in writing from the developer what is their intention moving forward, that is an item to be discussed at the October 16 Commission meeting. The developer has indicated that they are working on that, and they are having their internal discussions. They too have been evaluating the Court's opinion; they have had questions for the Attorneys and for the Administration. At some point, the City will receive something in writing from the developer as to whether they will move forward and on what basis. Mr. Morales will report that to the Commission on October 16. Mr. Morales stated that the Administration and the developer have been meeting weekly; the Administration continues to brief Commissioners since the decision, the Administration has also met with County Commissioner Sally Hayman and County Chairwoman Rebecca Sosa, and the Administration continues to work on the County funding portion, because no matter what happens, County funding is a critical piece. Therefore, the Administration has continued that effort.

Commissioner Weithorn requested the City Manager to provide the City Commission, during the October 16 Commission meeting, alternatives actions that City Commission may take. Mayor Bower stated that she would like to see alternatives as well. Mayor Bower stated that the Commission must make a decision; they have to show the City that they are continuing to move forward; otherwise, the County funding may go away. City Manager's Office to handle.

City Manager Jimmy L. Morales reported that County Chairwoman Rebecca Sosa told him that she remains 100% committed to the funding for the City of Miami Beach, as long as the City "gets its act together and gets it done quickly."

Mayor Bower stated that they need to continue to move forward.

Vice-Mayor Tobin stated that next time he says that the City should negotiate the deal while they still have the two parties present, so they can get the best deal, everyone should vote with him. Once again, he says, "I told you so." How do you expect to get a good deal, by releasing one of the parties before you negotiate? Vice-Mayor Tobin stated that he does not want the Commission's action to be "a political hustle."

Mayor Bower stated that she does not act for political reason.

Commissioner Góngora stated that he does not see it as a hustle, as he believes there is a need to move it forward.

Vice-Mayor Tobin suggested addressing this matter further after the upcoming election.

Commissioner Weithorn stated that she would like to hear alternatives on October 16. Although she believes it is unlikely that on October 16 the Commission will be able to make a decision, but at least they will know what alternatives the City has, and what information the Commission wants the Administration to provide more data. **City Manager's Office to handle.**

Mayor Bower stated that there may be people here playing games, but there are others who really care about Miami Beach; what is occurring is that the County is pushing the City, and the County was really upset about this setback. The other thing is that they do not look as a City and as a Commission, very well to business people; they have done many things that maybe are not the correct thing, and she includes herself in this critique, but what is happening here is unforeseen. She thinks that the Commission needs to keep focus as to what is best for the City; do they need a Convention Center or not? If they do need a Convention Center, the Commission should not play the politics; she will take her hits if she decides something else, and she is willing to take them because she believes it is more important to act for the good of the City than the games that are being played. She wants something to be said, done and moved forward. If she has to change her vote, she changes her vote.

Vice-Mayor Tobin stated that he is frustrated, because six months ago, he said as long as Portman and Tishman are in the picture, let us negotiate the business deal now while the two of them can fight it out and they will see how we get the best deal. Then the City Attorney told him that they would just do an LOI. However, an LOI is worth nothing. Instead of negotiating a good deal while two people are interested in making a good deal, the Commission decided to let one of them go, so now they basically just negotiate with Tishman, which is ridiculous. That is why he is frustrated. He tried to get the City Attorney to hire an expert attorney out of Texas who does nothing but these public assembly deals, and he kept being told they have an attorney; they will worry about it later.

Mayor Bower stated that she understands Vice-Mayor Tobin's frustration and she feels it too.

City Manager Morales asked for a point of clarification. The City feels a need to figure out what happened, where they are and move forward in this very important project. Another reason to do that, perhaps as important or more so than the County's financing component, because the County's funding is about \$79 million of RDA money, is that interest rates are starting to increase, and the longer they wait, one half of a point or three quarters of a point increase may occur, which translates to \$70-\$100 million in additional finance costs. Mr. Morales asked as a point of clarification, if the Commission wants him to come back with alternatives if Tishman decides they do not want to go forward, or even if they decide to go forward. Commissioner Weithorn stated that she wants to hear all the options. Commissioner Exposito agreed with Commissioner Weithorn. Commissioner Góngora stated that he wanted to hear all the options. Mayor Bower stated that she has no problem listening to all the options.

TO DO: City Manager Morales to provide the City Commission options during the October 16, 2013 City Commission as to what is recommended to be done if Tishman decides to go forward with the development and in the alternative if Tishman decides not to go forward.

Commissioner Weithorn stated that if the Manager figures out a way to do things faster, even with Tishman, the Commission may opt to do something that works better for everybody.

Vice-Mayor Tobin stated that perhaps two weeks later, after the election, they might have to go with another option.

Commissioner Weithorn stated that she intends to do what is right irrespective of the election outcome.

Mr. Smith stated that there was no formal action needed by the Commission on this item, it was merely to inform the Commission of the Court's ruling. Mr. Smith stated that if anyone wants the City to file an appeal, although he does not believe there are any grounds for one, to let him know now as they are running out of time.

Commissioner Góngora stated that he does not want to spend more money on the legal process.

The Committee of the Whole adjourned at 5:53 p.m.

7:29:18 p.m.

R9B Discussion Regarding Miami-Dade County's Request For Contribution Toward The Operational Cost Of South Shore Library.

(City Manager's Office)

ACTION: Discussion held. **Resolution No. 2013-28371 adopted.** Motion made by Commissioner Libbin to approve \$16,000 to help Miami-Dade County fund the South Shore Library for one year only, with no cuts to staff or hours of operation; seconded by Commissioner Weithorn; Voice vote: 5-0; Absent Commissioners Góngora and Wolfson. **Joe Jimenez to handle.**

Joe Jimenez, Assistant City Manager, explained that last week Miami–Dade County reached out to him requesting to help fund the operations of the South Shore Library. The total amount requested is half of the operational cost in the amount of \$16,365.78. He let them know that this will be brought to the City Commission with the condition that there will not be any cuts to staff or hours of operation and that it will be for one year.

Discussion held.

Mayor Bower stated that she does not want to set a precedent.

7:30:39 p.m. ADDENDUM MATERIAL 1:

R9C Discuss Fifth Annual Miami Beach Veterans Day Parade & Wreath Laying Ceremony. (City Manager's Office)

ACTION: Discussion held. Motion made by Commissioner Libbin; seconded by Vice-Mayor Tobin; Voice vote; 5-0; Absent: Commissioners Góngora and Wolfson. City Manager's Office to handle.

Jimmy L. Morales, City Manager, explained that the NCAC recommended that an item be brought to Commission so the Administration can spearhead the effort in the Veterans Day Parade. The City has the funds in its budget, and \$15,000 has been budgeted and funded for past three years. He feels comfortable that the City Administration can handle the event. Discussion continued regarding assignments.

Mayor Bower thanked Commissioner Libbin and Enid Rodriguez for coordinating this event since there is a lot of effort and work that goes into it. She requested a report after the event as to how it was handled. **Jimmy L. Morales to handle.**

Commissioner Libbin explained that Enid did a spectacular job, as a true professional she kept very neat and detailed notes, and she actually has a book that they can use as reference.

Vice-Mayor Tobin added that whatever the cost is and whatever it takes this should be done; this is one of the things that the City is obliged to take over, no matter the work involved and the cost.

Mayor Bower commended Commissioner Libbin for his leadership and success of this event. Discussion continued.

Mayor Bower expressed her appreciation for the work done by staff on the budget; she thanked the City Manager for his hard work, and added that it all seems smooth because of their efforts. She especially thanked Commissioners Exposito and Weithorn for their participation in the budgets and at Finance committee meetings.

End of Regular Agenda

Miami Beach Redevelopment Agency City Hall, Commission Chambers, 3rd Floor, 1700 Convention Center Drive September 30, 2013

Chairperson of the Board Matti Herrera Bower

Member of the Board Jorge Exposito

Member of the Board Michael Góngora

Member of the Board Jerry Libbin

Member of the Board Edward L. Tobin

Member of the Board Deede Weithorn

Member of the Board Jonah Wolfson

Executive Director Jimmy L. Morales Assistant Director Joe Jimenez General Counsel Jose Smith Secretary Rafael E. Granado

AGENDA

7:34:39 p.m.

NEW BUSINESS

Rafael E. Granado, City Clerk, announced that the RDA portion of the meeting was open.

SUPPLEMENTAL MATERIAL 1: Resolution

A Resolution Of The Chairperson And Members Of The Miami Beach Redevelopment Agency, Adopting And Appropriating The Operating Budgets For The City Center Redevelopment Area, The Anchor Shops And Parking Garage And The Pennsylvania Avenue Shops And Garage For Fiscal Year 2013/14.

(Tourism, Cultural & Economic Development)

ACTION: Resolution No. 598-2013 adopted. Motion made by Board Member Weithorn; seconded by Board Member Exposito; Voice-vote: 5-0; Absent: Commissioners Góngora and Wolfson. Max Sklar to handle.

7:34:57 p.m.

SUPPLEMENTAL MATERIAL 1: Revised memorandum & Resolution

A Resolution Of The Chairperson And Members Of The Miami Beach Redevelopment Agency, Adopting And Appropriating The Miami Beach Redevelopment Agency Capital Budget For Fiscal Year (FY) 2013/14 And Adopting The Capital Improvement Plan For 2013/14 Through 2017/18. Joint City Commission & Redevelopment Agency

(Tourism, Cultural & Economic Development)

ACTION: Item heard in conjunction with item R7C. Resolution No. 599-2013 adopted. Motion made by Board Member Weithorn; seconded by Board Member Exposito; Voice-vote: 5-0; Absent: Commissioners Góngora and Wolfson. Patricia Walker to appropriate the funds. **Max Sklar to handle.**

End of RDA Agenda

Meeting adjourned at 7:35:55 p.m.